IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

FRIDAY, THE 23RD NOVEMBER 2007 / 2ND AGRAHAYANA 1929

WP(C).No. 30818 of 2007(R)

PETITIONERS:

1. **J.YESUDAS,**
   SANDHYA NIVAS, TC 27/334, VIVEKANANDA NAGAR,
   KUNNUKUZHY, THIRUVANANTHAPURAM.

2. **ANILA V.Y.,**
   SANDHYA NIVAS, TC 27/334, VIVEKANANDA NAGAR,
   KUNNUKUZHY, THIRUVANANTHAPURAM.

3. **ANEESH V.Y.,**
   SANDHYA NIVAS, TC 27/334, VIVEKANANDA NAGAR,
   KUNNUKUZHY, THIRUVANANTHAPURAM.

4. **AJEESH V.Y.,**
   SANDHYA NIVAS, TC 27/334, VIVEKANANDA NAGAR,
   KUNNUKUZHY, THIRUVANANTHAPURAM.

BY ADV. SRI.D.KISHORE

RESPONDENTS:

1. **THE KERALA STATE DEVELOPMENT CORPORATION**
   FOR SCHEDULED CASTES & SCHEDULED TRIBES LTD.,
   REGIONAL OFFICE, MINCHIN ROAD, THYCAUD,
   THIRUVANANTHAPURAM-695 014, REPRESENTED BY
   ITS REGIONAL MANAGER.

2. **THE LAY SECRETARY AND TREASURER,**
   MEDICAL COLLEGE HOSPITAL, THIRUVANANTHAPURAM.

3. **THE DIRECTOR,**
   DIRECTORATE OF HEALTH SERVICES,
   THIRUVANANTHAPURAM.

4. **S.K.ASOKAN, S/O. R.SUKUMARAN,**
   ELAVINVILA VEEDU, KAKKAMOOLA, KALLIYOOR P.O.,
   THIRUVANANTHAPURAM DISTRICT.

BY SRI.M.K.CHANDRA MOHANDAS, SC
BY GOVERNMENT PLEADER SRI. BEJOY CHANDRAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 23/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

V.GIRI,J.

W.P (C) No. 30818 of 2007

Dated this the 23rd November, 2007

J U D G M E N T

Petitioners are the legal heirs of one C.S. Usha who died on 7.9.2007, while in harness. She was earlier working as a Hospital Attender in Medical College Hospital, Thiruvananthapuram. The deceased Usha had stood as a guarantor in relation to a loan availed by one S.K. Asokan from the 1st respondent Corporation. Repayment of the loan was defaulted. Apparently, the 1st respondent had sought for recovery of the amount due from the salary payable to Usha when she was in service. There was also a request by the 1st respondent, to see that the retirement benefits due to C.S. Usha should not be disbursed. Apparently, the arrears as on the date of death was Rs.71,000/-.

2. Usha died on 7.9.2007. Petitioners are the legal heirs. They are entitled to retirement benefits due under the account of Usha. That has not been done so far on account of the objection raised by the 1st respondent. Hence the writ petition.

3. A statement has been filed by the 1st respondent, pointing out that steps had been taken by the 1st respondent

since 2001 to effect recovery from the salary payable to Usha because she was a surety and was therefore liable along with principal debtor. But there was inadequate response from the Head of the Department.

4. From a perusal of the statement filed by the 1st respondent, it seems to be clear that Usha had not given any consent for recovering the amount claimed by the 1st respondent from her retirement benefits. Obviously, the legal heirs have also not given any such consent. In the absence of such consent, the retirement benefits cannot be made available for absorbing any liability which might have been incurred by the deceased as surety for a transaction with the 1st respondent. This is not to say that the 1st respondent is not entitled to proceed against the assets and legal heirs of the deceased surety, in accordance with law. The DCRG cannot be withheld in the absence of consent either by the employee or by the legal heirs.

Having heard the learned counsel for the petitioner the learned standing counsel for the 1st respondent and the learned Government Pleader, this writ petition is disposed of directing the 3rd respondent to take appropriate steps to issue a NLC/LC in

relation to C.S. Usha, Hospital Attender, Medical College Hospital, Thiruvananthapuram, within three months from the date of receipt of a copy of this judgment. Subject to the NLC/LC so issued, DCRG due under the account of C.S.Usha shall be disbursed without reference to the claim made by the 1st respondent in relation to the same. But it is made clear that these directions will be without prejudice to the right of the 1st respondent to institute appropriate proceedings against the petitioners as legal heirs of C.S. Usha for recovery of any amounts due from the principal debtor.

(V.GIRI, JUDGE)

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K.THANKAPPAN,J

CRL.A. NO.92 OF 1999

ORDER

25th May, 2007